

In re) Fair Hearing No. 11,605
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying his application for ANFC benefits on behalf of four children with whom he is living. The issue is whether the children meet the eligibility provisions of the ANFC regulations. Following an earlier Recommendation in this matter, dated April 20, 1993, the Board remanded the matter to the hearing officer at the request of the petitioner to consider whether the children's parents were eligible for ANFC. Despite a conference call with the attorneys on June 8, 1993, to clarify the issue on remand, the deadline imposed on the parties to submit further evidence and argument expired with no word from the petitioner's attorney.

The petitioner and a female companion live in a house with the four children of a couple who are presently incarcerated in federal prison. The father of the children was sentenced in April, 1992, to a term of five years. The children's mother was sentenced at the same time to a term of three years. The petitioner and his companion are friends of the family and have agreed to live in the house as

"caretakers" for the children. Neither the petitioner nor his companion is related to the children or their parents, and neither has any legal status as the children's guardian or foster parent. The parents intend to return to the home as soon as they are released from prison.

The petitioner consults by phone with one parent or the other (the parents are imprisoned in separate federal facilities) almost on a daily basis. The parents direct the petitioner's decisions regarding the children's financial needs, their care and guidance, and the operation of the household. One of the children requires ongoing medical treatment, which the petitioner oversees based on his communication with the parents.

ORDER

The Department's decision is affirmed.

REASONS

The petitioner concedes that as a general matter federal and state statutes and regulations require that to be eligible for ANFC dependent children must "be living with a relative in a residence maintained as a home by such relative(s)", unless the child has been placed in foster care. 42 U.S.C. § 606(a)(1); 33 V.S.A. § 1103; W.A.M. § 2302.1. However, the petitioner argues that although he is not a "relative" of the children in question, and the children are not in "foster

care", the children are nonetheless eligible for ANFC because their parents are "temporarily absent" from the home within the meaning of W.A.M. § 2302.12,¹ which defines a "home" for purposes of "residence" (supra) as follows:

A "home" is defined as the family setting maintained, or in process of being established, in which the relative assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not by itself a basis for disqualification (denial or termination) from eligibility for assistance.

The child(ren) and relative normally share the same household. A "home" shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

Even if the petitioner's interpretation of the above is correct, however, the regulations are clear that the parents, despite their "temporary absence", must be included in the children's "assistance group". W.A.M. § 2242. Therefore, it is the children's parents--not the petitioner--who must apply for ANFC in the children's behalf. W.A.M. § 2208. The petitioner, if he is the parents' "authorized representative", may be able to file the necessary written application for benefits in their behalf. Id. However, if it is the parents who, as the petitioner argues, are actually "responsible for the care and control" of the children within the meaning of § 2302.12, supra, it is they who must demonstrate that the

¹See also, 45 C.F.R. §233.90(c)(1)(v)(B).

children meet the necessary "deprivation" requirements (see W.A.M. §§ 2242.1 and 2330-2339) and who must cooperate with the Department in establishing their eligibility for benefits.

There is no indication in this case that the parents of the children in question have ever filed an application for ANFC. Unless and until they do so, it is unnecessary to determine whether they are "temporarily absent" from the home within the meaning of the above regulations. Clearly, however, the petitioner does not qualify for benefits in the children's behalf, and the children cannot qualify on their own without an "eligible relative" either in or "temporarily absent" from their home. The Department's decision is, therefore, affirmed.

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